IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2822 OF 2004

IN

SUIT NO.2657 OF 2004

...

American Express Services
India Ltd. ...Plaintiff

v/s.

Devi D. Nasta & Anr. ...Defendants

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Mr.Virag Tulzapurkar with Mr.Sanjay Kothari i/b Mulla & Mulla for the Plaintiff.

Ms.Suman Jain for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 29TH APRIL,2005

P.C.:

1. This is the notice of motion taken out by the Plaintiff. The plaintiff has filed the suit for a money decree in the amount of Rs.29,36,306.20. The Defendant is the owner of the flat, which by agreement dated 7-1-2000 was given on licence to the Plaintiff. An amount of Rs.19 lakh was given as interest free security deposit which was to be refunded by the Defendant to the Plaintiff, on the Plaintiff vacating the flat. By letter dated 16-1-2002 the Plaintiff wrote to the Defendant that they are willing to hand over possession back to the Defendant of the flat on 24-1-2002 and that the amount of security deposit should be refunded to them. The amount was not refunded. Therefore, though the Plaintiff was ready to vacate the flat, the Plaintiff continued in possession of the flat. It appears that possession of the Plaintiff was disturbed. However, by ad-interim order dated 16-2-2005 possession of the flat has been restored to the Plaintiff. Now, the situation is that admittedly the amount of deposit is lying with the Defendant.

The Plaintiff does not want to be in possession. The Defendant is not returning the amount. The Defendant is also not entitled to receive the possession of the flat, because he is not paying the amount.

2. In this view of the matter, in my opinion, it will be appropriate to appoint the Receiver on the flat so that the Receiver will appoint the agent to be in possession of the flat, so that the amount of royalty can be earned on the flat. Such arrangement would be in the interest of both sides. The Notice of Motion is, therefore, disposed of in following terms:

(i) The Receiver of this Court is appointed as Receiver on the flat described in Exh.B to the plaint. The Receiver shall immediately take possession of the flat from the Plaintiff and issue advertisement for appointment of agent of the Receiver to be in possession of the flat from the Plaintiff and issue advertisement for appointment of agent of the Receiver to be in possession of the flat during the pendency of the suit. Agency shall be given to the highest bidder on usual terms and conditions.

(ii) Till the Receiver takes possession, ad-interim order in terms of prayer clause (b) shall operate.

(iii) The Plaintiff shall be at liberty to take out notice of motion for further reliefs after the amount of royalty is deposited with the Receiver.

(iv) In case the Receiver does not receive appropriate bid, then the Plaintiff shall be at liberty to apply to the court for appropriate orders.

Notice of Motion disposed of.

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